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6                   UNITED STATES DISTRICT COURT  
7                   WESTERN DISTRICT OF WASHINGTON  
8                   AT TACOMA

9                   DAVID M. NJENGA,

10                  Plaintiff,

11                  v.

12                  WARDEN WIGGINS, OFFICER CINDY  
13                  OGDEN, and OFFICER JOSE MONIVAIIS  
14                  VAIL, *et al*,

15                  Defendants.

Case No. C08-5679 RJB/KLS

ORDER DIRECTING SERVICE BY  
U.S. MARSHAL

This civil rights action has been referred to the undersigned Magistrate Judge pursuant to Title 28 U.S.C. § 636(b)(1)(B). The plaintiff has been granted leave to proceed *in forma pauperis*. Plaintiff has provided service copies and filled out service forms. The Clerk is directed to effect service as provided below.

By Order Granting Motion to Consolidate, Case No. C09-5108 RBL was consolidated into this case. Dkt. 9. Therefore, the Clerk shall send copies of the Complaints filed in both cases, which shall for all purposes be treated as one complaint. In filing their answer or motion permitted under Rule 12, Defendants shall address both complaints, but shall do so as if they were contained in one document.

(l)        Service by United States Marshal

It is hereby **ORDERED** that the United States Marshal shall send each named defendant by first class mail, copies of the Complaints filed in C08-5679 and C09-5108 and of this Order, two

1 copies of the Notice of Lawsuit and Request for Waiver of Service of Summons, a Waiver of  
2 Service of Summons, and a return envelope, postage prepaid, addressed to the Clerk's Office.  
3 Pursuant to Federal Rule of Civil Procedure 4(i), the United States Marshall shall also send each of  
4 the aforementioned documents by certified mail to the Attorney General of the United States at  
5 Washington, District of Columbia, and to the United States Attorney for the Western District of  
6 Washington.

7 All costs of service shall be advanced by the United States. The Clerk shall assemble the  
8 necessary documents to effect service. The Clerk also shall send a courtesy copy of the Complaint  
9 to both the United States Attorney for the Western District of Washington and Joan K. Mell,  
10 Attorney at Law, III Branches Law PLLC, 1033 Regents Blvd., Suite 101, Fircrest, WA 98466.

11 (2) Response Required

12 Defendants shall have **thirty (30) days** within which to return the enclosed Waiver of  
13 Service of Summons. Each defendant who timely returns the signed Waiver shall have **sixty (60)**  
14 **days** after the date designated on the Notice of Lawsuit to file and serve an answer or a motion  
15 directed to the complaint, as permitted by Rule 12 of the Federal Rules of Civil Procedure.

16 Any defendant who fails to timely return the signed Waiver will be personally served with a  
17 summons and complaint, and may be required to pay the full costs of such service, pursuant to Rule  
18 4(d)(2). A defendant who has been personally served shall file an answer or motion permitted  
19 under Rule 12 within **thirty (30) days** after service.

20 (3) Filing and Service by Parties, Generally

21 All original documents and papers submitted for consideration by the court in this case, are  
22 to be filed with the Clerk of this court. The originals of all such papers shall indicate in the upper  
23 right-hand corner the name of the Magistrate Judge to whom the copies are to be delivered. The  
24 papers shall be accompanied by proof that such documents have been served upon counsel for the  
25 opposing party (or upon any party acting *pro se*). The proof shall show the day and manner of  
26 service and may be written acknowledgment of service, by certificate of a member of the bar of this  
27 court, or by affidavit of the person who served the papers.

1                   (4)     Motions

2       Any request for court action shall be set forth in a motion, properly filed and served. The  
3 motion shall include in its caption (immediately below the title of the motion) a designation of the  
4 Friday upon which the motion is to be noted upon the court's calendar. That date shall be the third  
5 Friday following filing of the motion (fourth Friday for Motions for Summary Judgment). All  
6 briefs and affidavits in opposition to any motion shall be filed and served not later than 4:30 p.m. on  
7 the Monday immediately preceding the Friday appointed for consideration of the motion. If a party  
8 fails to file and serve timely opposition to a motion, the court may deem any opposition to be  
9 without merit. The party making the motion may file, not later than 4:30 p.m. on the Friday  
10 designated for consideration of the motion, a response to the opposing party's briefs and affidavits.

11                   (5) Motions for Summary Judgment

12       If one of the parties files a motion for summary judgment pursuant to Federal Rules of Civil  
13 Procedure 56, the opposing party should acquaint him/herself with Rule 56. Rule 56 requires a  
14 nonmoving party to submit affidavits or other evidence in opposition to a motion for summary  
15 judgment if the moving party has shown the absence of issues of material fact and an entitlement to  
16 judgment as a matter of law. A nonmoving party may not rest upon the mere allegations or denials  
17 of prior pleadings. Rather, successful opposition to a motion for summary judgment requires the  
18 nonmoving party to set forth, through affidavits or other evidence, specific facts showing a genuine  
19 issue for trial. Failure by the nonmoving party to oppose a summary judgment motion or to present  
20 counter evidence could result in the court accepting the moving party's evidence as the truth, and  
21 entering final judgment in favor of the moving party without a full trial. *Rand v. Rowland*, 113  
22 F.3d 1520 (9<sup>th</sup> Cir. 1997).

23                   (6) Direct Communications with District Judge or Magistrate Judge

24       No direct communication is to take place with the District Judge or Magistrate Judge with  
25 regard to this case. All relevant information and papers are to be directed to the Clerk.

26                   (7) Clerk's Action

27       The Clerk is directed to send a copy of this Order and of the General Order issued by the

1 Magistrate Judges to Plaintiff.

2 DATED this 19th day of May, 2009.

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5 Karen L. Strombom  
6 United States Magistrate Judge

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